



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 30, 1997

Mr. Ron M. Pigott
Assistant General Counsel
Texas Department of Public Safety
P.O. Box 4087
Austin, Texas 78773-0001

OR97-2842

Dear Mr. Pigott:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 111558.

The Texas Department of Public Safety received an open records request for certain records that you contend may be withheld from the public pursuant to section 552.103 of the Government Code. To secure the protection of section 552.103, a governmental body must demonstrate that the requested information relates to pending or reasonably anticipated litigation to which the governmental body is a party. Open Records Decision No. 588 (1991) at 1. In this instance, you have explained that the records sought by Mr. David L. Waddell relate to the criminal prosecution of an alleged traffic violation. Further, you inform us that the attorney representing the state in the prosecution has specifically requested that the records not be released under the Open Records Act. We therefore conclude that you have made the requisite showing that the requested information relates to pending litigation for purposes of section 552.103. The requested records may therefore be withheld.¹

In reaching this conclusion, however, we assume that the opposing party to the litigation has not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing party in the litigation has seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103.

¹Because we resolve your request under section 552.103, we need not address the applicability of the other exception you raise, section 552.108 of the Government Code. Further, this letter ruling does not address whether the records at issue may be obtained through the court's discovery process.

We also note that the applicability of section 552.103 ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Loretta DeHay". The signature is fluid and cursive, with the first name "Loretta" and last name "DeHay" clearly distinguishable.

Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/RWP/rho

Ref.: ID# 111558

Enclosures: Submitted documents

cc: Mr. David L. Waddell
8903 C.E. King Parkway, Lot 180
Houston, Texas 77044
(w/o enclosures)